

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

MANGIERI ELECTRIC, INC., d/b/a  
MANGIERI PLUMBING AND HEATING

Employer

and

Case 33-RC-4897  
Stipulation

PLUMBERS AND PIPEFITTERS, LOCAL  
UNION NO. 25

Petitioner

**REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS AND  
OBJECTIONS AND RECOMMENDATIONS**

This Report contains the Regional Director's recommendations that the challenges to the ballots of four voters should be sustained, that the Employer's objections to conduct affecting the results of the election should be overruled, and that a Certification of Representative should issue.

**Procedural History**

The petition in this case was filed on October 29, 2004.<sup>1</sup> On November 18, the Regional Director approved a Stipulated Election Agreement executed by the Employer and the Petitioner. Pursuant to that agreement, an election was conducted on November 30 in the following, appropriate collective-bargaining unit:

All full-time and regular part-time journeymen and apprentice plumbers and pipefitters/sheetmetal workers employed by the Employer at its Galesburg, Illinois facility; but excluding all other employees, including electrical employees, office clericals, guards and supervisors as defined in the Act.

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<sup>1</sup> All dates are in the year 2004 unless otherwise specified.

The tally of ballots made available to the parties at the conclusion of the election shows the following results:

Approximate number of eligible voters .....	9
Void ballots.....	0
Votes cast for Petitioner.....	5
Votes cast against participating labor organization .....	3
Valid votes counted.....	8
Challenged ballots.....	4

Challenges are sufficient in number to affect the results of the election.

Timely objections to conduct affecting the results of the election were filed by the Employer on December 6.<sup>2</sup>

Pursuant to Section 102.69 of the Board's Rules and Regulations Series 8, as amended, the Regional Director caused an investigation to be made of the objections. All evidence adduced during the investigation has been carefully considered by the Regional Director who reports and recommends as follows:

### **Background**

The Employer is engaged in the building and construction industry and installs plumbing and heating systems in residential and commercial applications. At the time of the election, there were approximately 9 employees in the above unit under the overall supervision of President Joe Mangieri.

### **THE CHALLENGED BALLOTS**

#### **STEVE CROUSE, JOHN HILL, STEVE MILES AND DALE WATERS**

The ballots of Steve Crouse, John Hill, and Dale Waters were challenged by the Employer on the ground that none of those individuals had ever been employed by the Employer. The ballot of Steve Miles was challenged by the Employer on the grounds that he quit his employment prior to the payroll period ending date for eligibility to

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<sup>2</sup> A copy of the Employer's objections is attached as Exhibit 1.

participate in the election. In addition to the Employer's stated reasons for the challenges to the ballots of these individuals, the Board Agent conducting the election challenged their ballots on the ground that none of their names appeared on the Excelsior list of eligible voters.

While there is no dispute that Miles resigned his employment prior to the election, the Petitioner filed an unfair labor practice charge in Case 33-CA-14717, alleging that Miles was constructively discharged in violation of Section 8(a)(3) of the Act. The Petitioner also filed an unfair labor practice charge in Cases 33-CA-14612 and 33-CA-14630, alleging that the Employer refused to hire Crouse, Hill and Waters in violation of Section 8(a)(3) of the Act. After an investigation, each of these allegations was dismissed on July 29. No appeal was filed to the dismissal of the allegations pertaining to Miles. The Petitioner did appeal the dismissal of the allegations pertaining to Crouse, Hill and Waters. On February 4, 2005 the dismissals of those latter allegations were sustained.

In order to be eligible to vote in a Board-conducted election, an employee must be employed and working in the collective-bargaining unit both on the payroll period ending date for eligibility (November 10, here) and the date of the election (November 30, here). Roy N. Lotspeich Publishing Co., 204 NLRB 517 (1973). As Miles was not employed on either of those dates, he is not an eligible voter. Also, because they never became employees and there is no meritorious unfair labor practice charge over the Employer's refusal to hire Crouse, Hill and Waters, those individuals are not eligible to participate in the election.

Accordingly, I recommend that the challenges to the ballots of Steve Crouse, John Hill, Steve Miles, and Dale Waters be sustained.

## **THE OBJECTIONS**

### **Objections 1, 8, 11, and 14**

I will treat these objections together as their disposition relies on the same ground.

In Objection 1, the Employer alleges that “Immediately before the employees went into the polling place, Plumbers and Pipefitters Local No. 25 (“Local 25” or “the Union”) made promises, threats and otherwise coerced employees preparing to vote if they voted for the Union in the representation election.” In Objection 8, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 electioneered Zachary M. Johnson and otherwise coerced him as he prepared to vote in the representation election.” In Objection 11, the Employer alleges that “Immediately before the employees went into the polling place, Plumbers and Pipefitters Local No. 25 made promises, threats, and otherwise coerced James O’Brien as he prepared to vote if he voted for the Union in the representation election.” In Objection 14, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 electioneered James J. O’Brien and otherwise coerced him as he prepared to vote in the representation election.”

The Petitioner denies engaging in this or any conduct upon which the election may be set aside. As to these objections in particular, the Petitioner contends that the allegations lack specificity and should be overruled on that basis.

The Employer failed to present individuals or other evidence to support the allegations of these objections. It is incumbent upon the party filing objections to present

prima facie evidence that would warrant setting aside the election. Here, the Employer has failed to provide any evidence in support of these objections.

Accordingly, I recommend that Objections 1, 8, 11 and 14 be overruled.

**Objections 2, 6, 7, 12, and 13**

I will treat these objections together as each relates to the same facts and circumstances. In Objection 2, the Employer alleges that “Immediately before the employees went into the polling place, Plumbers and Pipefitters Local No. 25 provided gifts for employees in an attempt to coerce the employees to vote for the Union in the representation election.” In Objection 5, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 made promises, threats, and otherwise coerced Zachary M. Johnson as he prepared to vote if he voted for the Union in the representation election.” In Objection 6, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 gave Zachary M. Johnson the gift of a t-shirt and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election.” In Objection 7, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters, Local No. 25 bought Zachary M. Johnson breakfast and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election.” In Objection 12, the Union alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 gave James J. O’Brien the gift of a t-shirt and otherwise coerced him as he prepared to vote and if he voted for the Union in the representation election.” In Objection 13, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 bought James

J. O'Brien breakfast and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election."

The Petitioner denies engaging in any objectionable conduct, and that these allegations lack specificity and should be overruled on that basis. In addition, the Petitioner contends that even if it had paid for the employees' breakfast or had given them t-shirts, such is not objectionable conduct.

In support of these objections, the Employer presented an employee who attended a breakfast the morning of the election. The witness states that during the breakfast, representatives of the Petitioner distributed t-shirts bearing the Petitioner's name and logo. This witness stated that approximately one week before the election, he received a call from another employee (who openly supported the Petitioner) inviting him to a breakfast at the Broadview Restaurant in Galesburg, IL. The breakfast was to be held at 6 a.m. on the morning of the election, about one hour before the opening of the polls. The witness states that while the employee did not say that the breakfast was being sponsored by the Petitioner, the employee did say that he would have to see if he could get Petitioner representative Dale Waters to pay for the breakfast. The witness attended the breakfast, arriving about 6 a.m. The witness contends that there were about 20-25 people in attendance at the breakfast, only 6 of whom were employees of the Employer. Petitioner representatives Dale Waters and Jon Varnier were present. The identify of the remaining attendees is not known. The witness states that during the breakfast, Petitioner representative Vanier distributed t-shirts to the employees in attendance but made no comments or requests connected to the election while distributing the t-shirts. The Petitioner did not make campaign statements or speeches during the breakfast. The

witness states that he was told he could order anything he wanted from the menu. When the bills arrived for the breakfast, the petitioner states that he saw the waitress give them to Petitioner representative Vanier. The witness estimates the value of the meals at approximately \$3-5 each. The breakfast meeting ended about 6:45 a.m.

In Lach-Simkins Dental Laboratories, 186 NLRB 116 (1970), the Board held that where a union provided sandwiches and soft drinks of minimal value at a luncheon it sponsored on the day of the election at times including when the polls were open, such was not objectionable conduct. The Board also held, in Nu-Skin International, 307 NLRB 223 (1992), that the distribution of inexpensive pieces of campaign propaganda such as buttons, stickers, or t-shirts is not objectionable. The evidence in the instant matter shows that the Petitioner's total cost for the employees' meals, at most, was approximately \$30. The Petitioner also presented evidence that the value of each of the t-shirts was about \$12, which is of minimal value. I also note that the Employer has presented no evidence that employees were compelled to attend the breakfast and presented no evidence that receipt of breakfast or a t-shirt was in any way connected to how employees voted in the election. In these circumstances, neither paying for employees' breakfasts nor the gift of the t-shirts provides a basis upon which the election may be set aside.

Accordingly, I recommend that Employer's Objections 2, 6, 7, 12, and 13 be overruled.

### **Objection 3**

In Objection 3, the Employer alleges that "Local 25 Business Agent Dale Waters loitered immediately outside the polling place during the course of the election in an

attempt to coerce the employees into voting for Local 25 and to otherwise interfere with the election.”

The Petitioner denies engaging in the conduct alleged in this objection or in any conduct that would provide a basis upon which the election may be set aside. The Petitioner further contends that these allegations lack specificity and should be overruled on that basis. Lastly, the Petitioner asserts that Water’s presence at the polling place was limited to attending the pre-election conference and the post-election ballot count as a representative of the Petitioner, and casting a ballot immediately prior to the end of the closing of the polls.<sup>3</sup>

In support of this objection, the Employer presented an employee-witness who testified that he was present in the polling area just after the polls had closed but prior to counting of the ballots and heard Waters remark that he (Waters) heard the Petitioner’s observer challenge the ballot of the Employer’s observer while Waters was waiting to vote. Waters’ statement at the count was made in response to a discussion of why the ballot of the Employer’s observer had not been challenged. However, the witness contends that Waters could not have been standing in the hall waiting to vote because Waters had voted about two minutes before the Petitioner’s observer who voted immediately before the Employer’s observer. The Employer presented a second employee-witness who states that he was leaving the Employer’s parking lot around 7:35–7:40 a.m. and saw Waters entering the Employer’s facility.

The Board has ruled that, in certain situations, a conversation between a party to the election and employees preparing to vote, regardless of the nature of the conversation,

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<sup>3</sup> At the time of the election, a charge was pending in which it was alleged that the Employer had unlawfully refused to hire Waters because of his membership in the Petitioner.



is conduct that will warrant setting aside an election. Milchem, Inc., 170 NLRB 362 (1968). The proscriptions in Milchem apply only to conversations occurring while voters are in the polling area or in line to vote. Even if Waters was “loitering” in the hallway outside the polling area, the Employer presented no evidence and the investigation failed to adduce any evidence that Waters spoke to any voters while there or that he was observed there by any employees. In the absence of any evidence that Waters’ presence was observed by any employee or that Waters spoke to any prospective voter, the conduct alleged in this objection does not provide a basis upon which the election may be set aside. See, J.P. Mascaro & Sons, 345 NLRB No. 42 (2005).

Accordingly, I recommend that Employer’s objection 3 be overruled.

#### **Objection 4**

In Objection 4, the Employer alleges that “Local 25 brought four (4) individuals to vote who had never been employees of Mangieri Plumbing in an attempt to coerce other employees into voting for Local 25.”

The Petitioner denies engaging in the conduct alleged in this objection. The Petitioner further contends that these allegations lack specificity and should be overruled on that basis. Finally, the Petitioner contends that, notwithstanding that these four individuals were not employed by the Employer at the time of the election, they nevertheless were entitled to cast ballots in the election because their lack of employment with the Employer was alleged to be an unlawful refusal to hire in a unfair labor practice charge pending at the time of the election.

The evidence relative to the resolution of this objection is undisputed. Thus, the four individuals to whom this objection relates are the same individuals who are discussed above in the challenged ballot section of this report.

Other than the mere act of casting challenged ballots, the Employer has failed to present any evidence of other conduct directed at any other employees in which any of these voters engaged before, during, or after casting their challenged ballots.

Participating in a Board-conducted election at a time when an individual's status as an employee employed within the collective-bargaining unit is in dispute is not of itself coercive conduct. In the absence of any evidence of other conduct in which these individuals may have engaged, the allegation of this objection does not provide a basis upon which the election may be set aside.

Accordingly, I recommend that Employer's objection 4 be overruled.

#### **Objections 5, 9, 10, 15 and 16**

I will treat these objections together because the investigation showed that they involve similar and related conduct. In Objection 5, the Employer alleges that "Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 made promises, threats, and otherwise coerced Zachary M. Johnson as he prepared to vote if he voted for the Union in the representation election." In Objection 9, the Employer alleges that "Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 promised Zachary M. Johnson that they would not attempt to organize and otherwise would 'leave alone' his current employer Neil Thomas Plumbing as he prepared to vote and if he voted for the Union in the representation election." In Objection 10, the Employer alleges that "Immediately before he went into the polling

place, Plumbers and Pipefitters Local No. 25 threatened Zachary M. Johnson that they would attempt to organize and otherwise would harass his current employer Neil Thomas Plumbing as he prepared to vote and if he did not vote for the Union in the representation election.” In Objection 15, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 promised James J. O’Brien that they would not attempt to organize and otherwise would ‘leave alone’ his current employer Neil Thomas Plumbing as he prepared to vote and if he voted for the Union in the representation election.” In Objection 16, the Employer alleges that “Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 threatened James J. O’Brien that they would attempt to organize and otherwise would harass his current employer Neil Thomas Plumbing as he prepared to vote and if he did not vote for the Union in the representation election.”

The Petitioner denies engaging in the conduct alleged in this objection and denies that it has engaged in any conduct upon which the election may be set aside. The Petitioner further contends that these allegations lack specificity and should be overruled on that basis.

In support of these objections, the Employer presented an employee-witness who stated that he was told by another employee that the Employer’s election observer had told the second employee on numerous occasions that the Petitioner would not attempt to organize Thomas Plumbing. The witness states that the second employee said that the Employer’s observer said this sometime after Thomas Plumbing began operations (which occurred after the petition was filed in this matter) but before the election. The investigation revealed that Thomas Plumbing Owner Neil Thomas previously had worked

for Employer but left around mid-November to start his own business. The investigation also disclosed that when Johnson and O'Brien were laid off by Employer in the middle of November, they immediately went to work for Thomas.<sup>4</sup>

I conclude that this conduct does not constitute a basis upon which the election may be set aside. First, the comment, in neither of its double-hearsay versions, is attributed to any representative of the Petitioner. Instead, the comment is attributed to an employee who, as found below in Objection 17, is not an agent of the Petitioner. Second, contrary to the Employer's objection, there is no evidence that these promises or threats were contingent on how the employees voted or otherwise connected to the election. Third, even if the statements were made, they do not constitute a basis upon which the election may be set aside. A statement that a union does not intend to organize a different employer is not a promise of benefit or coercive conduct. The conduct is not directed towards the Employer involved in this proceeding, rather allegedly being directed towards an employer that is not a party to this election. The Employer has presented no evidence to support its allegation of "harassing" conduct against the other employer other than to connect it to any organizational attempt. I will not assume that a union's attempt to organize employees is harassing conduct, and in the absence of evidence of any specific conduct at issue, the allegations of these objections do not provide a basis upon which an election may be set aside.

Accordingly, I recommend that Employer's Objections 5, 9, 10, 15 and 16 be overruled.

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<sup>4</sup> The Employer included the names of Johnson and O'Brien on the Excelsior list of eligible voters, and each cast an unchallenged ballot during the election.

## **Objection 17**

In Objection 17, the Employer alleges that “Local 25, through an agent of the Union, told employees that the company could never ‘win’ because the International Plumbers had ‘bought off’ the NLRB in Washington, D.C. with \$2,000,000.”

The Petitioner denies engaging in this or any conduct that would provide a basis upon which the election may be set aside. The Petitioner further contends that these allegations lack specificity and should be overruled on that basis.

In support of its objection, the Employer presented Employer President Joseph Mangieri who testified that Employee A told him around November 5 that “he gets employee calls from John Palmer all the time and that Palmer told him that the Employer was not going to win and that the Petitioner had invested \$2 million in Washington to receive favorable rulings.” In purported support of this objection the Employer presented an employee witness who testified that Employee A quoted Palmer as saying that the Petitioner had \$2 million to run the Employer out of business.<sup>5</sup>

The Employer argues that Palmer is an agent of the Petitioner and therefore his remarks are attributable to the Petitioner. The Employer’s contention is based on the following assertions: Palmer was a “salt” for the Petitioner; Palmer consulted Petitioner Organizer Waters as to whether Palmer should participate in a strike; Palmer went on strike and led other employees on strike; after Palmer was no longer employed by the Employer, he maintained regular contact with the Employer’s employees in an attempt to gain support for the Petitioner; and Palmer served as a conduit for information from the Petitioner to the employees throughout the organizing campaign. As an example of being

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<sup>5</sup> This testimony does not support the stated objection and, to the extent that it might constitute an allegation of objectionable conduct, has not been considered by me as it is at best an objection raised beyond the prescribed period for filing.

a conduit of information, one of the Employer's witnesses provided evidence that Palmer was the one who notified him by telephone of the breakfast held the morning of the election and Mangieri gave evidence that Palmer left a message on the "on-call" phone stating that Mangieri employee Neil Thomas should call Palmer about a job opportunity with another employer that the Petitioner was trying to arrange for Thomas elsewhere.

The evidence shows that the Petitioner recommended that several members apply for work with the Employer; a number of members did apply; some including Palmer, were hired and voted in the election; and some were not hired. There is no evidence that the Petitioner gave any particular status or authority to Palmer beyond that possessed by any other employee who supported it. Although Palmer participated in a strike against the Employer, there is no evidence that he "led" the strike anymore than the other three participants. While the striking employees consulted with the Petitioner before beginning and ending the strike, there is nothing in those acts that establish an agency relationship. The Employer's conclusional claim that Palmer acted as a conduit for the Petitioner is supported by no evidence of activity beyond that of a typical employee union supporter.

As the party asserting Palmer's status as an agent of the Petitioner, the Employer has the burden of proving that status. Cornell Forge Co., 339 NLRB No. 85 (2003). The agency relationship must be established with regard to the conduct that is alleged to be unlawful. Pan-Oston Co., 337 NLRB 305 (2001). An individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party. Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to make the particular statement or take the particular action in question.

The Board has consistently held that serving as a union observer or being prominent in an organizing campaign does not make an employee an agent of a union. Vitek Electronics, 268 NLRB 522 (1984).

The Employer has failed to proffer any evidence that the Petitioner said or did anything that would give Palmer actual authority or give other employees a reasonable basis to believe he possessed apparent authority to act on its behalf. The alleged indicia to which the Employer refers as making Palmer an agent of the Petitioner, even if true, simply do not support his agency status. Palmer engaged in minimal activities and those undisputed activities in which he did engage are insufficient to establish that he is an agent of the Petitioner in regard to the conduct alleged to be objectionable. Rather, Palmer's activities are typical of those of employees acting in support of union's organizing campaign.

Having found Palmer not to be an agent of the Union, his conduct is evaluated as third-party conduct. Generally, the Board will overturn an election based on third-party conduct only when it is so aggravated that it creates a general atmosphere of fear and reprisal rendering a free election impossible. Westwood Horizons Hotel, 270 NLRB 802 (1984). The Board accords less weight to conduct by a nonparty than to conduct by a party because "neither unions nor employers can prevent misdeeds...by persons over whom they have no control." NLRB v. Griffith Oldsmobile, 184 NLRB 722 (1970). Palmer's alleged statement clearly fails to meet the test established by Westwood. At worst, the statement is a campaign misrepresentation by a third party employee. The Board has found no basis for setting aside elections on the basis of misrepresentations by third parties. Phoenix Mechanical, 303 NLRB 888 (1991).

Accordingly, I recommend that Employer's objection 17 be overruled.

**Objection 18**

In Objection 18, the Employer alleges that "Bryan Snell voted in the election at the direction of Local 25, although he had no expectation of continued employment with Mangieri as he left immediately after the election and has not shown up to work for Mangieri since he voted in the election."

The Petitioner, in addition to its denial and its lack of specificity argument, also states that Snell returned to work for Employer on November 17 after being recalled and was an employee on the date of the election but was immediately and unlawfully terminated upon the announcement of the election results.

In support of this objection, the Employer presented President Mangieri and two other witnesses. The evidence shows that after Snell voted and before he left the polling area, he told the Employer's observer that he was taking a personal day off. The observer responded that Snell needed to tell Mangieri that. The proffered evidence also shows that Snell did not work for Employer that day, did not call in the next day, allegedly went to work for Mechanical Service Incorporated the day after he voted, and that Employer terminated him on December 1.

This objection is in the nature of a post-election challenge to Snell's casting a ballot in the election. The Board does not permit post-election challenges in the guise of an objection. Thus, the objection to Snell's eligibility is without merit. Heartshare Human Services of N.Y., 317 NLRB 611 (1995). Whether Snell took another job after he voted, even had he done so immediately after casting his ballot, is irrelevant. Amoco



Oil Corporation, 289 NLRB 280, fn. 1 (1988). Snell was employed by the Employer at the time he cast his ballot; therefore, he was an eligible voter.

Accordingly, I recommend that Employer's objection 18 be overruled.

**Objections 19, 20, and 21**

I will treat these objections together as they are closely related. In Objection 19, the Employer alleges that "Local No. 25 promised Bryan D. Snell a "union card" if he voted for the Union in the Mangieri election." In Objection 20, the Employer alleges that "Local No. 25 promised Zachary M. Johnson<sup>6</sup> a "union card" if he voted for the Union in the Mangieri election." In Objection 21, the Employer alleges that "Local No. 25 promised James J. O'Brien a "union card" if he voted for the Union in the Mangieri election."

The Petitioner denies engaging in this conduct and argues that the objection lacks of specificity.

In support of Objection 19, the Employer presented a witness who stated that Snell told him around 4 p.m. on the day of the election that now that he had served his purpose for the Union, he would be admitted to the union apprentice program after having an application on file for 3 or 4 years. In support of Objection 20, the witness says that Johnson told him that Waters, or some other union official, or possibly Palmer, told Johnson that he could apply for a union apprentice membership and would be admitted immediately to work as an apprentice. In support of Objection 21, the witness states that one or two weeks before the election, as well as at other times, he was told by Waters to go to the Union hall to fill out an application to join the union. The witness

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<sup>6</sup> While the Employer initially identified this person as Zachary M. Thomas, in the investigation of this matter the Employer clarified the identity as Zachary M. Johnson.

states he was told the same thing on the day election while he was outside the Employer's building and after he had voted, although he states he was additionally told that the Union would see what it could do about getting him a job. The witness does not recall who told him these things.

As to Objection 19, the evidence shows that Snell commenced work for the Employer as an apprentice in April 2004. He was laid off in early September 2004, and obtained interim employment commencing in October 2004. He was recalled to work by the Employer a few weeks before the election, and worked for the Employer until the election. After the election he returned to work for his "interim" employer where he was apprenticed to a journeyman as he had been at the Employer.

Assuming for purposes of this decision that Snell made the statement attributed to him, there is no evidence that the Petitioner ever promised him admission to its apprentice program; rather Snell testified that no such promise was ever made. As of the time Snell's testimony was taken, more than 2 months after the election, he had not been admitted to the Petitioner's apprentice program.

As to Objection 20 and the hearsay statement attributable to Johnson, there is no evidence that the alleged promise was made in exchange for his vote or that it was conditioned on the outcome of the election. Since Johnson was already working as an apprentice, the alleged promise does not constitute the sort of benefit that would likely influence Johnson's vote.

As to Objection 21, the evidence shows that Water's comment to O'Brien prior to the election concerning filling out an application to join was not tied to O'Brien's voting for the Petitioner. Nor is there evidence that the comment was made by a Union official

or agent. Urging an employee to join a union during an organizing campaign is not objectionable conduct. In these circumstances, the Employer has failed to present evidence that warrants setting aside the election.

Accordingly, I would recommend that Employer's Objections 19, 20 and 21 be overruled.

### **CONCLUSION AND RECOMMENDATION**

Having recommended that the challenges to the ballots of Steve Miles, John Hill, Steve Crouse and Dale Waters be sustained and having recommended that the Employer's objections be overruled in their entirety, and the investigation having failed to disclose evidence of other conduct upon which the election may be set aside, it is further recommended that a Certification of Representative issue to the Petitioner<sup>7</sup>.

January 12, 2006.

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Ralph R. Tremain, Regional Director  
National Labor Relations Board  
Subregion 33  
300 Hamilton Square, Suite 200  
Peoria, Illinois 61602-1248

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<sup>7</sup> Under the provisions of Sections 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington, D.C. by January 26, 2006. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in this Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

**THE UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33**

MANGIERI PLUMBING & HEATING

and

Case No. 33-RC-4897

PLUMBERS & PIPEFITTERS  
LOCAL UNION NO .25

**OBJECTIONS TO THE ELECTION**

Mangieri Plumbing & Heating, Co., (“Mangieri” or “the Company”) through its attorneys, Wessels & Pautsch, P.C., by Bruce F. Mills, pursuant to NLRB Rules and Regulations 102.69(a) objects to the election conducted by Subregion 33 in the above captioned case, which took place on November 30, 2004. Mangieri submits the following objections to the election.

1. Immediately before the employees went into the polling place, Plumbers and Pipefitters Local No. 25 (“Local 25” or “the Union) made promises, threats, and otherwise coerced employees preparing to vote if they voted for the Union in the representation election.

2. Immediately before the employees went into the polling place, Plumbers and Pipefitters Local No. 25 (“Local 25” or “the Union) provided gifts for employees in an attempt to coerce the employees to vote for the Union in the representation election.

3. Local 25 Business Agent Dale Waters loitered immediately outside the polling place during the course of the election in an attempt to coerce the employees into voting for Local 25 and to otherwise interfere with the election.

4. Local 25 brought four (4) individuals to vote who had never been employees of Mangieri Plumbing in an attempt to coerce other employees into voting for Local 25.

5. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 ("Local 25" or "the Union) made promises, threats, and otherwise coerced Zachary M. Johnson as he prepared to vote if he voted for the Union in the representation election.

6. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 ("Local 25" or "the Union) gave Zachary M. Johnson the gift of a t-shirt and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election.

7. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 bought Zachary M. Johnson breakfast and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election.

8. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 electioneered Zachary M. Johnson and otherwise coerced him as he prepared to vote in the representation election.

9. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 promised Zachary M. Johnson that they would not attempt to

organize and otherwise would “leave alone” his current employer Neil Thomas Plumbing as he prepared to vote and if he voted for the Union in the representation election.

10. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 threatened Zachary M. Johnson that they would attempt to organize and otherwise would harass his current employer Neil Thomas Plumbing as he prepared to vote and if he did not vote for the Union in the representation election.

11. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 (“Local 25” or “the Union) made promises, threats, and otherwise coerced James J. O’Brien as he prepared to vote if he voted for the Union in the representation election.

12. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 (“Local 25” or “the Union) gave James J. O’Brien the gift of a t-shirt and otherwise coerced him as he prepared to vote and if he voted for the Union in the representation election.

13. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 bought James J. O’Brien breakfast and otherwise coerced him as he prepared to vote if he voted for the Union in the representation election.

14. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 electioneered James J. O’Brien and otherwise coerced him as he prepared to vote in the representation election.

15. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 promised James J. O’Brien that they would not attempt to organize and otherwise would “leave alone” his current employer Neil Thomas Plumbing

as he prepared to vote and if he voted for the Union in the representation election.

16. Immediately before he went into the polling place, Plumbers and Pipefitters Local No. 25 threatened James J. O'Brien that they would attempt to organize and otherwise would harass his current employer Neil Thomas Plumbing as he prepared to vote and if he did not vote for the Union in the representation election.

17. Local 25, through an agent of the Union, told employees that the Company could never "win" because the International Plumbers had "bought off" the NLRB in Washington, D.C. with \$2,000,000.

18. Bryan D. Snell voted in the election at the direction of Local 25, although he had no expectation of continued employment with Mangieri as he left immediately after the election and has not shown up to work for Mangieri since he voted in the election.

19. Local No. 25 promised Bryan D. Snell a "union card" if he voted for the Union in the Mangieri election.

20. Local No. 25 promised Zachary M. Thomas a "union card" if he voted for the Union in the Mangieri election.

21. Local No. 25 promised James J. O'Brien a "union card" if he voted for the Union in the Mangieri election.

By the above, and other conduct, Local No. 25 interfered with, coerced and restrained employees in the exercise of their Section 7 rights; destroyed the requisite laboratory conditions and interfered with the employees' ability to exercise a free and reasoned choice in the above election.

For all of the reasons set forth above, Mangieri Plumbing & Heating respectfully

requests that the election be set aside and a new election be scheduled as soon as possible.

Dated this 6th day of December, 2004.

Mangieri Plumbing & Heating Co.

By:/s/Bruce F. Mills  
Bruce F. Mills

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